

ORDER SUMMARY – Case Number: C-11-0605

Name(s): Magnus Vogel Preston & Associates

Order Number: C-11-0605-12-FO02

Effective Date: December 10, 2012

License Number: n/a
Or NMLS Identifier [U/L] (Revoked, suspended, stayed, application denied or withdrawn)
 If applicable, you must specifically note the ending dates of terms.

License Effect: none

Not Apply Until: n/a

Not Eligible Until: n/a

Prohibition/Ban Until: December 10, 2017

Investigation Costs	\$1,051.20	Due: 12/29/12	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Fine	\$15,000	Due: 12/29/12	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Assessment(s)	\$0	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$5,250	Due: 12/29/12	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Judgment	\$0	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Satisfaction of Judgment Filed?		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N		
No. of Victims:		4		

Comments: Joint and several with C-11-0605-12-FO01

1 STATE OF WASHINGTON
2 DEPARTMENT OF FINANCIAL INSTITUTIONS
3 DIVISION OF CONSUMER SERVICES

4 IN THE MATTER OF DETERMINING
5 Whether there has been a violation of the
6 Mortgage Broker Practices Act of Washington by:

No.: C-11-0605-12-FO02

7 MAGNUS VOGEL PRESTON &
8 ASSOCIATES; GREGORY K. VOGEL, Owner;
9 SANDI J. VOGEL, Owner; DUSTIN R. VOGEL,
10 Loan Originator,

FINAL ORDER AS TO MAGNUS VOGEL
PRESTON & ASSOCIATES

11 Respondents.

12 I. DIRECTOR'S CONSIDERATION

13 A. Default. This matter has come before the Director of the Department of Financial
14 Institutions of the State of Washington (Director), through his designee, Consumer Services Division
15 Director Deborah Bortner (Director's designee), pursuant to RCW 34.05.440(1). On June 27, 2011,
16 the Director, through his designee, Consumer Services Division Director Deborah Bortner, issued a
17 Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist, Prohibit from
18 Industry, Impose Fine, Order Restitution, and Collect Investigation Fee (Statement of Charges)
19 against Magnus Vogel Preston & Associates, Gregory K. Vogel, Sandi J. Vogel, and Dustin R.
20 Vogel. A copy of the Statement of Charges is attached and incorporated into this order by this
21 reference. The Statement of Charges was accompanied by a cover letter dated June 27, 2011, a
22 Notice of Opportunity to Defend and Opportunity for Hearing, and a blank Application for
23 Adjudicative Hearing for each Respondent (collectively, accompanying documents). On June 27,
24 2011, the Department served Respondents with the Statement of Charges and accompanying
documents by First-Class mail and Federal Express overnight delivery. On July 12, 2011, the
documents sent to Respondent Magnus Vogel Preston & Associates by Federal Express overnight

1 delivery were delivered. The documents sent by First-Class mail were not returned to the
2 Department by the United States Postal Service as undeliverable.

3 Respondent Magnus Vogel Preston & Associates did not request an adjudicative hearing
4 within twenty calendar days after the Department served the Notice of Opportunity to Defend and
5 Opportunity for Hearing, as provided for in WAC 208-08-050(2).

6 B. Record Presented. The record presented to the Director's designee for her review and
7 for entry of a final decision included the Statement of Charges, cover letter dated June 27, 2011,
8 Notice of Opportunity to Defend and Opportunity for Hearing, and blank Application for
9 Adjudicative Hearing for Respondent Magnus Vogel Preston & Associates, with documentation for
10 service.

11 C. Factual Findings and Grounds for Order. Pursuant to RCW 34.05.440(1), the
12 Director's designee hereby adopts the Statement of Charges, which is attached hereto.

13 II. FINAL ORDER

14 Based upon the foregoing, and the Director's designee having considered the record and being
15 otherwise fully advised, NOW, THEREFORE:

16 A. IT IS HEREBY ORDERED, That:

- 17 1. Respondent Magnus Vogel Preston & Associates cease and desist offering loan
18 modification services or otherwise conducting the business of a mortgage broker
or loan originator in the state of Washington;
- 19 2. Respondent Magnus Vogel Preston & Associates is prohibited from participation
20 in the conduct of the affairs of any mortgage broker subject to licensure by the
Director, in any manner, for a period of five (5) years;
- 21 3. Respondent Magnus Vogel Preston & Associates shall pay a fine in the amount of
22 \$15,000. This fine shall also be joint and several with any Respondent(s) required
to pay a fine under C-11-0605-12-FO01;
- 23 4. Respondent Magnus Vogel Preston & Associates shall pay restitution of all fees or
24 monies collected from at least the consumers referenced in paragraph 1.2 of the

1 Statement of Charges. Payment of restitution shall also be joint and several with
2 any Respondent(s) required to pay restitution under C-11-0605-12-FO01;

3 5. Respondent Magnus Vogel Preston & Associates shall pay an investigation fee in
4 the amount of \$1,051.20. This fee shall also be joint and several with any
5 Respondent(s) required to pay an investigation fee under C-11-0605-12-FO01; and

6 6. Respondent Magnus Vogel Preston & Associates shall maintain records in
7 compliance with the Act, and provide the Department with the location of the
8 books, records and other information relating to Respondent Magnus Vogel
9 Preston's business, and the name, address and telephone number of the individual
10 responsible for maintenance of such records in compliance with the Act.

11 B. Reconsideration. Pursuant to RCW 34.05.470, Respondent Magnus Vogel Preston &
12 Associates has the right to file a Petition for Reconsideration stating the specific grounds upon which
13 relief is requested. The Petition must be filed in the Office of the Director of the Department of
14 Financial Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S.
15 Mail at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of the
16 Final Order upon Respondent Magnus Vogel Preston & Associates. The Petition for Reconsideration
17 shall not stay the effectiveness of this order nor is a Petition for Reconsideration a prerequisite for
18 seeking judicial review in this matter.

19 A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the
20 date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a
21 written notice specifying the date by which it will act on a petition.

22 C. Stay of Order. The Director's designee has determined not to consider a Petition to
23 Stay the effectiveness of this order. Any such requests should be made in connection with a Petition
24 for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

D. Judicial Review. Respondent Magnus Vogel Preston & Associates has the right to
petition the superior court for judicial review of this agency action under the provisions of chapter

1 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and
2 sections following.

3 E. Non-compliance with Order. If you do not comply with the terms of this order, the
4 Department may seek its enforcement by the Office of the Attorney General to include the collection
5 of the fine, fee, and restitution imposed herein. The Department also may assign the amounts owed
6 to a collection agency for collection.

7 F. Service. For purposes of filing a Petition for Reconsideration or a Petition for Judicial
8 Review, service is effective upon deposit of this order in the U.S. mail, declaration of service
9 attached hereto.

10 DATED this 10th day of December, 2012



11
12 STATE OF WASHINGTON
13 DEPARTMENT OF FINANCIAL INSTITUTIONS



14
15 DEBORAH BORTNER
16 Director
17 Division of Consumer Services

1 B. **Gregory K. Vogel (Respondent Gregory Vogel)** is an owner of Respondent
2 Magnus Vogel Preston. Respondent Gregory Vogel was licensed by the Department to conduct
3 business as loan originator on or around August 8, 2007, and continued to be licensed until his license
4 expired on December 31, 2007.

5 C. **Sandi J. Vogel (Respondent Sandi Vogel)** is an owner of Respondent Magnus Vogel
6 Preston. Respondent Sandi Vogel has never been licensed to conduct the business of a Mortgage
7 Broker or Loan Originator by the Department.

8 D. **Dustin R. Vogel (Respondent Dustin Vogel)** is a loan originator for Respondent
9 Magnus Vogel Preston. Respondent Dustin Vogel has never been licensed to conduct the business of
10 a Mortgage Broker or Loan Originator by the Department.

11 **1.2 Unlicensed Activity.** Between at least in or around May 2010, and the date of this Statement
12 of Charges, Respondents held themselves out as able to assist at least four consumers in applying to
13 obtain a loan modification on property located in the state of Washington. The consumers involved
14 in these loan modifications paid advance fees to Respondents totaling at least \$5,250 as follows:

Consumer 1 [REDACTED]	\$1,500
Consumer 2 [REDACTED]	\$1,500
Consumer 3 [REDACTED]	\$1,500
Consumer 4 [REDACTED]	\$750

19 **1.3 Misrepresentations and Omissions.** Respondents solicited the consumers listed above via
20 email or telephone to sign up for loan modification services. Respondents' "retainer commitment,"
21 sent to at least two of these consumers, stated "(y)our file has been approved for a loan modification
22 program." Respondents' "Policy of Refund Guarantee," provided to at least two of these consumers,
23 guaranteed a full refund if Respondents were unable to provide a loan modification for the

1 consumers. None of these consumers obtained a loan modification after paying an advance fee to
2 Respondents. Respondents did not provide refunds of the advance fees to any of these consumers.

3 **1.3 Failure to Fully and Timely Comply with Director's Authority.** On or around August 27,
4 2010, the Department served a directive, addressed to Respondent Magnus Vogel Preston, on
5 Respondents, requesting certain documents and information more specifically set forth therein. A
6 response was due on or before September 11, 2010². Respondents did not respond to the directive.
7 On or around September 20, 2010, the Department served a subpoena, addressed to Respondent
8 Magnus Vogel Preston, on Respondents, requiring a response to the earlier directive served on or
9 around August 27, 2010; this response was due on or before October 10, 2010³. Respondents did not
10 respond to the Department's subpoena.

11 On or around February 23, 2011, the Department sought enforcement of the September 30,
12 2010, subpoena by the Office of the Attorney General of Washington. On or about March 21, 2010,
13 the assigned Assistant Attorney General sent a letter to Respondents notifying Respondents that legal
14 action would be commenced unless Respondents provided the materials responsive to the subpoena
15 on or before April 15, 2011. The Department received a partial response to the subpoena on or
16 around April 11, 2011.

17 As part of the response, Respondents acknowledged the requirements to obtain a license to
18 operate as a Mortgage Broker or a Loan Originator. Respondents also agreed to cease and desist
19 operating as Mortgage Brokers or Loan Originators until such time as they obtained the appropriate
20

21 ² The directive required Respondents to respond "no later than fifteen days following the date of (the) directive." The directive was
dated August 27, 2010. The due date was thus September 11, 2010, a Saturday. To be timely, a response would have to be received by
22 the close of business on the following business day: September 13, 2010.

23 ³ The subpoena required Respondents to respond "no later than ten days following the date of (the) subpoena." The subpoena was
dated September 30, 2010. The due date was thus October 10, 2010, a Sunday. To be timely, a response would have to be received by
the close of business on the following business day: October 11, 2010.

1 licenses from the Department. Respondents also submitted a Claim of Non-Applicability form
2 indicating that their conduct did not require licensure by the Department.

3 **1.3 On-Going Investigation.** The Department's investigation into the alleged violations of the
4 Act by Respondents continues to date.

5 **II. GROUNDS FOR ENTRY OF ORDER**

6 **2.1 Definition of Mortgage Broker.** Pursuant to RCW 19.146.010(14) and WAC 208-660-
7 010(29), "Mortgage Broker" means any person who, for compensation or gain, or in the expectation
8 of compensation or gain (a) makes a residential mortgage loan or assists a person in obtaining or
9 applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to
10 make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential
11 mortgage loan.

12 **2.2 Definition of Loan Originator.** Pursuant to RCW 19.146.010(11)(a), "Loan originator"
13 means a natural person who for direct or indirect compensation or gain, or in the expectation of direct
14 or indirect compensation or gain (i) takes a residential mortgage loan application for a mortgage
15 broker, or (ii) offers or negotiates terms of a mortgage loan. "Loan originator" also includes a person
16 who holds themselves out to the public as able to perform any of these activities. "Loan originator"
17 does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For
18 the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and
19 distribution of information common for the processing of a loan in the mortgage industry and
20 communication with a borrower to obtain information necessary for the processing of a loan. A
21 person who holds himself or herself out to the public as able to obtain a loan is not performing
22 administrative or clerical tasks.

1 **2.3 Requirement to Obtain and Maintain License.** Based on the Factual Allegations set forth
2 in Section I above, Respondents are in apparent violation of RCW 19.146.0201(2) and (3) and RCW
3 19.146.200 for engaging in the business of a mortgage broker or loan originator without first
4 obtaining and maintaining a license under the Act. Individuals or entities negotiating residential
5 mortgage loan terms act as mortgage brokers or loan originators and must be licensed under the Act
6 unless specifically exempt from the Act.

7 **2.4 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondents
8 are in apparent violation of RCW 19.146.0201(1), (2), and (3) for directly or indirectly employing a
9 scheme, device or artifice to defraud or mislead borrowers or lenders or any person, engaging in an
10 unfair or deceptive practice toward any person, or obtaining property by fraud or misrepresentation.

11 **2.5 Requirement to Comply with Director's Authority:** Based on the Factual Allegations set
12 forth in Section I above, Respondents are in apparent violation of RCW 19.146.235 for failing to
13 fully and timely respond to Department directives and subpoenas. Pursuant to RCW 19.146.235(2)(b)
14 and (c), for the purpose of investigating violations arising from the Act, the Director may, at any
15 time, either personally or by designee, may subpoena the books, accounts, records, files, and any
16 other documents the Director or designated person deems relevant to the inquiry, of every licensee
17 and of every other person engaged in the business of mortgage brokering, whether such a person acts
18 or claims to act under, or without the authority of, this chapter. Pursuant to RCW 19.146.235(9)(a),
19 no person subject to investigation under the Act may knowingly withhold any books, records, or
20 other information.

21 III. AUTHORITY TO IMPOSE SANCTIONS

22 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 19.146.220(4), the
23 Director may issue orders directing a licensee, its employee or loan originator, or other person subject

1 to the Act to cease and desist from conducting business in a manner that is injurious to the public or
2 violates any provision of the Act.

3 **3.2 Authority to Prohibit from the Industry.** Pursuant to RCW 19.146.220(5)(a) and (d), the
4 Director may issue orders removing from office or prohibiting from participation in the conduct of
5 the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator
6 of any licensed mortgage broker or any person subject to licensing under the Act for any violation of
7 RCW 19.146.0201(1) through (9), or RCW 19.146.200, or failure to comply with a directive or order
8 of the Director.

9 **3.3 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2) and (3) and WAC 208-660-530,
10 the Director may impose fines on a licensee, employee or loan originator of the licensee, or other
11 person subject to the Act for any violations of the Act, or any violations of RCW 19.146.0201(1)
12 through (9), or RCW 19.146.200, or failure to comply with a directive or order of the Director.

13 **3.4 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2), the Director may issue
14 orders directing a licensee or other person subject to the Act to pay restitution.

15 **3.5 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-
16 550(4) and WAC 208-660-520(9), upon completion of any investigation of the books and records of a
17 licensee or other person subject to the Act, the Department will furnish to the licensee or other person
18 subject to the Act a billing to cover the cost of the investigation. The investigation charge will be
19 calculated at the rate of forty-eight dollars (\$48) per hour that each staff person devoted to the
20 investigation.

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1 **IV. NOTICE OF INTENTION TO ENTER ORDER**

2 Respondents' violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC,
3 as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose
4 Sanctions, constitute a basis for the entry of an Order under RCW 19.146.220, RCW 19.146.221, and
5 RCW 19.146.223. Therefore, it is the Director's intention to ORDER that:

6 **4.1** Respondents Magnus Vogel Preston & Associates and Gregory K. Vogel, Sandi J. Vogel, and
7 Dustin R. Vogel cease and desist offering loan modification services or otherwise conducting the
8 business of a mortgage broker or loan originator in the state of Washington;

8 **4.2** Respondents Magnus Vogel Preston & Associates and Gregory K. Vogel, Sandi J. Vogel, and
9 Dustin R. Vogel be prohibited from participation in the conduct of the affairs of any mortgage broker
10 or consumer loan company subject to licensure by the Director, in any manner, for a period of five
11 (5) years;

11 **4.3** Respondents Magnus Vogel Preston & Associates and Gregory K. Vogel, Sandi J. Vogel, and
12 Dustin R. Vogel jointly and severally pay a fine which as of the date of this Statement of Charges
13 totals \$15,000;

13 **4.4** Respondents Magnus Vogel Preston & Associates and Gregory K. Vogel, Sandi J. Vogel, and
14 Dustin R. Vogel jointly and severally pay restitution of all fees or monies collected from at least the
15 consumers referenced in paragraph 1.2 above;

15 **4.5** Respondents Magnus Vogel Preston & Associates and Gregory K. Vogel, Sandi J. Vogel, and
16 Dustin R. Vogel jointly and severally pay an investigation fee which as of the date of this Statement
17 of Charges totals \$1,051.20, calculated at \$48 per hour for the twenty-one and nine-tenths (21.9) staff
18 hours devoted to the investigation; and

17 **4.6** Respondents Magnus Vogel Preston & Associates and Gregory K. Vogel, Sandi J. Vogel, and
18 Dustin R. Vogel, maintain records in compliance with the Act, and provide the Department with the
19 location of the books, records and other information relating to Respondent Magnus Vogel Preston's
20 business, and the name, address and telephone number of the individual responsible for maintenance
21 of such records in compliance with the Act.

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1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist,
3 Prohibit from Industry, Impose Fine, Order Restitution, and Collect Investigation Fee (Statement of
4 Charges) is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW
5 19.146.223, and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The
6 Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in
7 the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING
8 accompanying this Statement of Charges.

9
10 Dated this 27th day of June, 2011



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12
13 DEBORAH BORTNER
14 Director
15 Division of Consumer Services
16 Department of Financial Institutions

15 Presented by:
16 [Redacted]

17 MARISA E. BROGGEL
18 Financial Legal Examiner

19 Approved by:
20 [Redacted]

21 JAMES R. BRUSSELBACK
22 Enforcement Chief

